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July 2, 2013

CC:PA:LPD:PR (REG-125398-12), Room 5203

Internal Revenue Service
PO Box 7604, Ben Franklin Station
Washington, DC 20044

Re: REG-125398-12, Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit

Dear Commissioner Werfel:

The Silver State Health Insurance Exchange appreciates the opportunity to comment on proposed rule REG-125398-12 published in the Federal Register on May 3, 2013¹ regarding Advance Premium Tax Credit eligibility and minimum value of eligible employer sponsored plans. The proposed rule is based on section 1401 of the Affordable Care Act (ACA).

The proposed rule seeks to define minimum value for employer health insurance plans and clarifies various eligibility provisions for the Advance Premium Tax Credit. We appreciate the objectives of the proposed rule and request consideration of the following comments.

26 CFR § 1.36B-2 ELIGIBILITY FOR PREMIUM TAX CREDIT

We support the rule proposed at 26 CFR § 1.36B-2(c)(3)(iv) that indicates individuals enrolled in retiree coverage under an employer are enrolled in minimum essential coverage. Without this rule, retirees who are enrolled in their previous employers' retiree health insurance program would not be considered covered under minimum essential coverage and would therefore be subject to the tax penalty for failure to maintain minimum essential coverage as required under [26 USC § 5000A](#). This rule protects Nevada's retirees who are responsibly covered by health insurance through their previous employer.

¹ [REG-125398-12](#) Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit, Federal Register, Vol. 78, No. 86, Friday, May 3, 2013, Rules and Regulations, pp. 25909-25916.

26 CFR § 1.36B-3(c)(2) APTC EFFECTIVE DATES FOR BIRTH, ADOPTION OR PLACEMENT FOR ADOPTION

We appreciate that the proposed rule at 26 CFR § 1.36B-3(c)(2) attempts to allow a taxpayer to receive Advance Premium Tax Credit (APTC) and Cost Sharing Reductions (CSR) on the date of birth, adoption or placement for adoption. However, we are concerned because it appears to create several conflicts with final regulations at [45 CFR 155.420](#) and will create difficult administrative challenges (*see page 6 for our recommended changes*).

1. APTC Effective Date Conflict

The proposed rule at 26 CFR § 1.36B-3(c)(2) requires that (see Example 1):

“A child enrolled in a qualified health plan in the month of the child’s birth, adoption, or placement with the taxpayer for adoption or in foster care, is treated as enrolled as of the first day of the month for purposes of this paragraph (c).”

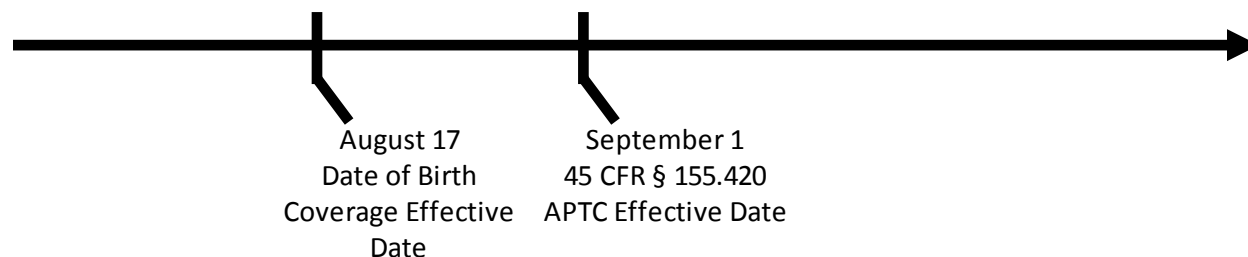
Example 1



However, the final regulation at 45 CFR 155.420(b)(2) indicates (see Example 2):

"In the case of birth, adoption or placement for adoption, the Exchange must ensure that coverage is effective on the date of birth, adoption, or placement for adoption, but advance payments of the premium tax credit and cost-sharing reductions, if applicable, are not effective until the first day of the following month, unless the birth, adoption, or placement for adoption occurs on the first day of the month"

Example 2

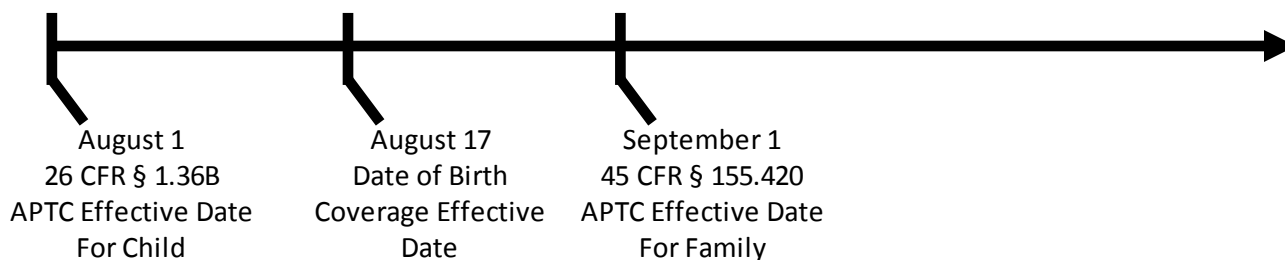


The effective date for the APTC in the proposed rule at 26 CFR § 1.36B-3(c)(2) (Example 1) is one month earlier than provided in the final rule in 45 CFR 155.420(b)(2) (Example 2).

2. Different Effective Date for Child Compared to Family

The proposed rule at 26 CFR § 1.36B-3(c)(2) speaks only to the child. However, 45 CFR § 155.420 provides for special enrollment periods for a qualified individual who “gains a dependent or becomes a dependent through marriage, birth, adoption or placement for adoption.”² Therefore, an entire family may enroll in a Qualified Health Plan (QHP) offered through the Exchange based on the birth, adoption or placement for adoption of a child under 45 CFR § 155.420 and the APTC would be effective the following month. However, if 26 CFR § 1.36B-3(c)(2) supersedes 45 CFR § 155.420, the child would start APTC in the month of birth, adoption. This creates a potential situation in which there are different effective dates for one family for enrollment in APTC (see Example 3).

Example 3



If the family is already enrolled in a QHP at a specific APTC and CSR level and the child is added as a result of a birth, adoption or placement for adoption, does the added child change the APTC and CSR level for the entire family, or just the child on the first of the month of the date of birth, adoption or placement for adoption? Does the rest of the family's APTC and CSR change on the first of the following month?

If the family enrolls in a QHP through the Exchange as a result of the birth on the date of birth, adoption or placement for adoption, is only the child eligible for APTC and CSR on the first of the month of the date of birth? Is the rest of the family eligible for APTC and CSR on the first of the following month?

3. Payment Required for Entire Month

To be eligible for APTC and CSR, 26 CFR § 1.36B-3(c)(1)(ii) requires the taxpayer to pay the taxpayer's share of premium for the individual's coverage under the plan for the month. Therefore, if a child is born on the last day of the month, to receive APTC, that taxpayer must pay the taxpayer's portion for the entire month. Because it is a special enrollment event, if the taxpayer does not pay that month's premiums, the child would not be eligible for coverage until the first day of the year following the next open enrollment.

² 45 CFR 155.420(d)(2)

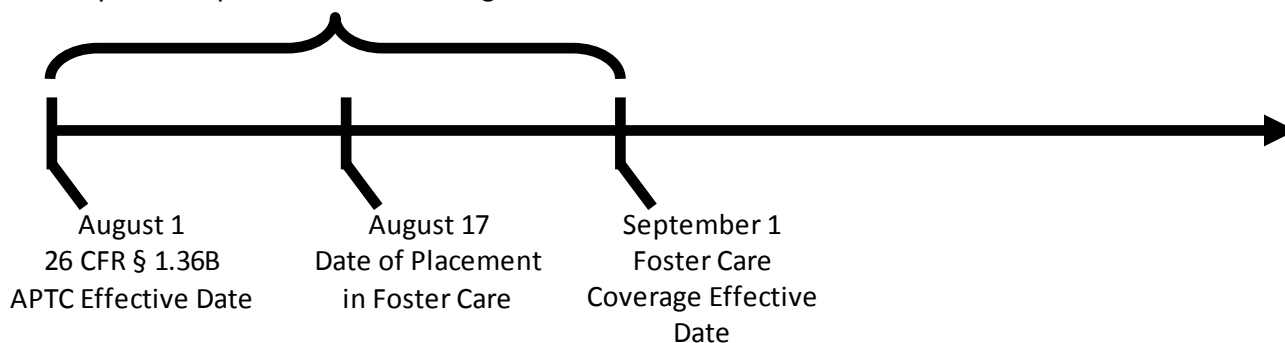
4. Foster Care Conflict

The proposed rule at 26 CFR 1.36B-3(c)(2) requires a child placed with the taxpayer in foster care be treated as enrolled as of the first day of the month for purposes of calculating APTC. However, 45 CFR 155.420 does not include placement in foster care as a qualifying event. Therefore, it would appear that placement in foster care would be included in one of the following qualifying events with delayed effective dates of coverage. This would result in a period during which a taxpayer would have to pay their portion of premium without coverage for the foster child.

- a. Loss of minimum essential coverage.³ If the child had coverage prior to placement in foster care. Pursuant to 45 CFR 155.420, coverage would be effective on the first of the month after the loss of coverage (after placement in foster care). However, pursuant to 26 CFR 1.36B-3(c)(2), the taxpayer would be required to pay for coverage for the month in which the child was placed with the taxpayer in foster care (see Example 4).

Example 4

Payment required without coverage of child



- b. Newly eligible for APTC⁴. If the child did not previously have coverage, the child could be determined newly eligible for APTC, which would be effective on the first of the month following QHP selection if the selection was made on the 1st through the 15th of the month or would be effective on the first of the second following month if the selection was made on the 16th through the last day of the month.⁵ If a child is placed in foster care with a family on August 17, and the selection is made on October 16, enrollment would not be effective until December 1.⁶ However, pursuant to proposed regulation 26 CFR 1.36B-3(c)(2), the taxpayer would have to pay premiums for the child for the months of August through November, without coverage (see Example 5).

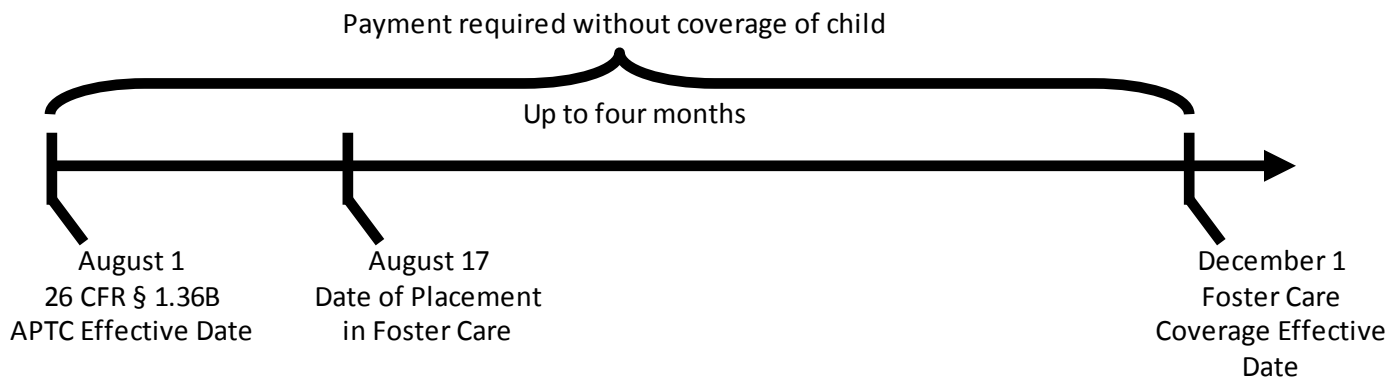
³ 45 CFR 155.420(d)(1)

⁴ 45 CFR 155.420(d)(6)

⁵ 45 CFR 155.420(b)(1)

⁶ 45 CFR 155.420(c) allows an individual 60 days to enroll in coverage.

Example 5



RECOMMENDATION TO CORRECT 26 CFR § 1.36B-3(c)(2)

Concerns Summarized

Nevada has implemented its Exchange assuming 45 CFR § 155.420 is final. Therefore, if a child is born, adopted or placed for adoption, Nevada intends to enroll the child and/or the family in a QHP with an effective date of coverage of the date of birth, adoption or placement for adoption and APTC would begin on the first of the following month. This would result in no premium payment to the carrier for that first partial month of coverage. It is important to note this rule applies to the entire family enrolling in coverage due to the birth, adoption or placement for adoption of a child and not just the child.

We are concerned that 26 CFR § 1.36B-3(c)(2) in conjunction with 26 CFR § 1.36B-3(c)(1)(ii) would require premium payment from a tax payer for the period between the first of the month and the date of birth, adoption or placement for adoption, without the tax payer receiving a service until the date of birth, adoption or placement for adoption.

We also understand that the rule at 45 CFR § 155.420(b)(2) would result in no Cost Sharing Reduction (CSR) for the first partial month, which may be problematic for certain low income families. We recognize the need for a family with an income at or below 250% of the Federal Poverty Level to be consistently placed in the proper silver plan variation and support the applicability of the cost sharing reduction on the date of birth, adoption or placement for adoption. While the income eligibility requirements for APTC as defined in [26 USC § 36B](#) and CSR as defined in [42 USC § 18071](#) are the same, the law does not appear to preclude two separate effective dates of coverage for purposes of APTC and CSR. However, if an earlier effective date for CSR is allowed as described in the proposed rule, 45 CFR § 155.420(b)(2) would need to be corrected.

Finally, foster children have not been included in any of the qualifying events provided in 45 CFR § 155.420. Any requirement in the proposed rule that is out of synch with the final rules issued by CMS would result in between one and four months of required payments without

coverage as described in (4) Foster Care Conflict. We recommend that either foster children be excluded from the proposed IRS regulation or 45 CFR § 155.420 be corrected to include foster children.

Recommendation

Due to the concerns expressed above, we recommend the wording at 26 CFR § 1.36B-3(c)(2) be changed as follows:

“A child *or family* enrolled in a qualified health plan *due to a special enrollment period caused by a in-the-month-of-the* child’s birth, adoption, or placement with the taxpayer for adoption *or-in-foster care*, is treated as enrolled as of the first day of the month for purposes of *this paragraph-(e) cost-sharing reductions as described in 45 CFR § 156.410.*”

Furthermore, we recommend 45 CFR § 155.420(2)(i) be corrected as follows:

“In the case of birth, adoption or placement for adoption, the Exchange must ensure that coverage is effective on the date of birth, adoption, or placement for adoption, *but and:*

(A) *Advance* ~~advance~~ payments of the premium tax credit ~~and cost-sharing reductions~~, if applicable, are not effective until the first day of the following month, unless the birth, adoption, or placement for adoption occurs on the first day of the month; *and*

(B) *Cost sharing reductions as described in 45 CFR § 156.410 are effective as of the first day of the month of birth, adoption or placement for adoption.*

26 CFR § 1.36B-3(G)(2) APPLICABLE PERCENTAGE TABLE

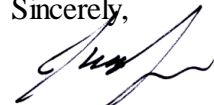
The table at 26 CFR § 1.36B-3(g)(2) corrects a previous version that provided the APTC for individuals with incomes less than 400% FPL, but did not include the APTC for individuals with incomes at 400% FPL as provided in [26 USC § 36B](#). We agree with and support this correction.

26 CFR § 1.6011-8 REQUIREMENT TO FILE INCOME TAX RETURN

26 CFR § 1.6011-8 requires that an individual receiving the APTC file a tax return by April 15 of the following year. We support this requirement as it is consistent with [26 USC § 36B](#).

We appreciate the opportunity to offer these comments and look forward to working with you further on these and other health insurance exchange implementation activities. Thank you very much for considering our input.

Sincerely,



Jon M. Hager
Executive Director, Silver State Health Insurance Exchange

Silver State Health Insurance Exchange Comments
REG-125398-12, Minimum Value and Other Rules Regarding APTC
July 2, 2013

cc: Jackie Bryant, Deputy Chief of Staff, Office of the Governor
Barbara Smith Campbell, Silver State Health Insurance Exchange Board Chair
Mike Willden, Director, Department of Health and Human Services
Scott Kipper, Commissioner of Insurance, Division of Insurance
Gary Cohen, Director, Center for Consumer Information and Insurance Oversight
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